

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 05-36

PETITION OF HEATH CAREY AND TARA CAREY FOR LEAVE TO INTERVENE

Now come Heath Carey and Tara Carey, who presently reside at 21 Fairway Drive, Buzzard's Bay, Massachusetts and respectfully move that the Department grant leave for them to intervene in the above-referenced adjudicatory proceeding. As grounds therefor, petitioners state as follows:

(1) The Manner in Which Petitioners Are Substantially and Specifically Affected by the Proceeding

The Petitioners are the parents of Violet and Iris Carey, the two children who were killed in connection with the incident involving release of natural gas at 65 Main Street, Hopkinton, Massachusetts on July 24, 2002. The Petitioners have brought a civil action in Middlesex Superior Court against NSTAR and others in connection with that incident (Carey v. NSTAR Gas Co., et al., Middlesex Superior Court No. 2002-04171).

The present proceeding involves issues with respect to whether NSTAR complied with certain federal regulations relating to the gas service at 65 Main Street, Hopkinton. Among the regulations at issue are 49 C.F.R. §192.481 (monitor service lines exposed to the atmosphere) and 49 C.F.R. §192.605(a)(follow operations and maintenance manual of NSTAR Gas). Whether NSTAR complied with these particular regulations are directly and centrally relevant

issues in the civil litigation filed in Middlesex County. (See, e.g., Plaintiffs' Disclosure of Expert Witnesses at 5, attached as Exhibit "A"). If NSTAR in fact violated these regulations, such violation would be evidence of negligence under Massachusetts law. Campbell v. Leach, 352 Mass. 367 (1967); Woodcock v. Trailways of New England, Inc., 340 Mass. 36 (1959).

Accordingly, the Petitioners are substantially and specifically affected by this proceeding in that the results of this proceeding could have a material effect on the nature of the evidence which Petitioners may introduce at their civil trial. For example, testimony properly recorded in the course of the proceeding, if otherwise meeting requirements for prior reported testimony would be admissible in the civil action. Commonwealth v. Trigones, 397 Mass. 633 (1986). Any admission made by NSTAR in the course of these proceedings would be admissible in the civil action. Liacos et al., Handbook of Massachusetts Evidence §8.8 (7th ed. 1999).

Therefore, the Petitioners are substantially and specifically affected by this proceeding. The Petitioners sustained catastrophic losses which they contend resulted from the failure of NSTAR to comply with applicable regulations. That issue of compliance is the subject of this proceeding. The results of this proceeding could materially affect the evidence which Petitioners may introduce at their civil trial. For all of these reasons, it is undeniable that Petitioners are substantially and specifically affected by this proceeding.

(2) The Relief Sought

The relief sought by the Petitioners is granting of their Petition to Intervene.

(3) The Statutory Authority

The statutory authority for this Petition is found in G.L. c. 30A, §10 and 220 C.M.R. 1.03.

(4) The Nature of the Evidence Which Petitioners Will Present If The Petition is Granted

In the course of discovery in the civil action, Petitioners have adduced evidence relevant to the issues in this hearing which may not otherwise be known or available to the Department. Petitioners would intend to offer this evidence in the form most convenient to the Department. For example, deposition testimony taken in the civil action could be offered into evidence in this proceeding and could simply be made part of the record.

Specifically, deposition testimony from the civil action has established that NSTAR employee Richard Gray, who was present at 65 Main Street on several occasions in the months leading up to the incident, observed the rusty condition of the transition fitting in the basement of 65 Main Street (Depo. of Richard Gray at 24 (attached as Exhibit “B”)). He notified his supervisor, Scott Alexander, about the condition of the fitting (Id. at 24-25). This occurred on February 22, 2002 (Id. at 25). The reason Gray notified his supervisor was that he had a concern about the rust on the piping on the gas service entering the building (Id. at 27). According to Gray, Alexander came to 65 Main Street on that same date to examine the piping (Id. at 30-31). Alexander examined the piping and then cleared Gray to perform his work without replacing any parts (Id. at 49-50).

NSTAR’s specific knowledge of the corroded condition of the service line is of course relevant to the issues before the Department whether NSTAR complied with 49 C.F.R. §192.481

and 49 C.F.R. §605(a). Thus, evidence presently in the possession of Petitioners is directly relevant to the Department's inquiry.

In addition to the above-described testimony of Richard Gray, Petitioners are in possession of deposition testimony of other NSTAR workers and supervisors. Some of their testimony bears directly on NSTAR's compliance with the above-referenced regulations. Petitioners believe that this testimony would be of assistance to the Department in connection with this proceeding.

Petitioners understand that the purpose of this proceeding is not to determine whether NSTAR is liable to the Careys. However, because of the overlapping issues in this proceeding and the civil litigation, the information addressed on discovery in the civil case will further the inquiry of the Department. Petitioners would intend to make this information available to the Department by offering deposition transcripts and other discovery materials into evidence or in any other manner as may be directed by the Department consistent with G.L. c. 30A, §11.

WHEREFORE, Petitioners respectfully request that they be allowed to intervene in this proceeding.

The Petitioners,
Heath Carey and Tara Carey
By Their Attorneys,

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CERTIFICATE OF SERVICE

I, Alan L. Cantor, hereby certify that I have served a true and correct copy of the foregoing document upon all counsel of record by hand delivering to the first two named counsel and by mailing a copy of same via first class mail, postage prepaid to the third and fourth named counsel as follows:

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This ____ day of June, 2005.

Alan L. Cantor